

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.2770 OF 2022
IN
CRIMINAL APPEAL NO.743 OF 2022**

Shankar @ Rahul Vasant Petekar Applicant
Versus
The State of Maharashtra & Anr. Respondents

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IN
CRIMINAL APPEAL NO.743 OF 2022**

Shankar @ Rahul Vasant Petekar Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Rajendra Tajane, Advocate i/b. Mangesh M. Deshmukh,
for the Applicant.

Mr. R.M. Pethe, APP for the Respondent-State.

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**CORAM :SARANG V. KOTWAL, J.
DATE : 30th AUGUST, 2022**

P.C. :

1. These two applications are for suspension of sentence and release of the applicant on bail during pendency and final disposal of Criminal Appeal No.743/2022.

2. The applicant was convicted for commission of the offences punishable under Sections 376(2)(i), 376(2)(j), 506 of IPC and under Section 5 read with Section 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The highest sentence imposed on the applicant was for twenty years apart from imposition of fine. The appeal is already admitted.

3. Heard Shri Rajendra Tajane, learned counsel for the applicant and Shri R.M. Pethe, learned APP for the State.

4. Learned counsel for the applicant submitted that the victim was a tutored witness as her cross-examination reveals that her family had told her what to depose before the Court. There is no C.A. report which could be called as an incriminating piece of evidence and, therefore, the doctor's opinion is erroneous. The applicant is already in custody for about six years nine months out of twenty years of actual imprisonment and, therefore, he may be granted bail.

5. Learned APP opposed this application. He

submitted that the victim was eight years of age at the time of incident and the medical evidence supports her case.

6. I have considered these submissions. I have perused the victim's deposition as well as the Medical Officer's evidence. The victim was examined as PW-3. Her date of birth was 5.1.2008. The incident had taken place on 15.10.2015. The applicant was a neighbour. On the date of incident, he called the victim to his house. He took her to his bed-room and committed forcible penetrative sexual assault. The victim had told her mother about the same. She took the victim for medical examination. The police were informed and the FIR was lodged.

7. The victim was only eight years of age. The Medical Officer was examined as PW-5. In her examination-in-chief, she had opined thus :

“As per my provisional opinion, I had opinion that victim had injuries to her genitals. It suggested forceful attempt of sexual intercourse. The injury was fresh. Final opinion was kept reserved as report of FSL were awaiting. Now I am shown FSL report,

it corroborate with my provisional opinion.”

8. Thus, at this stage the victim’s deposition and the medical opinion are strong circumstances against the applicant. The submissions made by learned counsel for the applicant can be considered at the stage of final hearing.

9. Considering the seriousness of incident, evidence of the victim and the medical opinion, no case for grant of bail is made out. The sentence imposed is for twenty years. Hence, both these applications are rejected.

(SARANG V. KOTWAL, J.)